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REPORTS

NOTES OF THE WEEK

Cross-examination as to Adultery

The protection afforded to parties and witnesses from cross-examination intended to show that they have been guilty of adultery is, so far as proceedings in the High Court are concerned, limited to proceedings instituted in consequence of adultery, Matrimonial Causes Act, 1950, s. 32. Whether the limitation applies also in the magistrates' courts, or extends to all proceedings, has been questioned and depends on the construction of s. 3 of the Evidence Further Amendment Act, 1869, *see* note "v" p. 331 of *Stone*, 1957.

In *Lewis* v. *Lewis* [1958] 1 All E.R. 859, a petitioner (the husband) who alleged cruelty, had been asked in cross-examination whether he had committed adultery, which he admitted, after unsuccessfully objecting to the question.

Several points were taken in the Court of Appeal. On the particular point about the cross-examination the Court held that as the proceedings had not been instituted in consequence of adultery (although pleadings were subsequently amended), s. 32 had no application, neither could it be said that the cross-examination was inadmissible on the ground that the husband was not bound to incriminate himself, since the ecclesiastical penalties which may be involved in cases where persons commit adultery have been held by the Court not to be at the present time, such as to carry with them the protection of witnesses which they are able to claim in order to avoid incriminating questions.

A question that is sometimes asked is whether in these days it is really necessary to preserve the privilege of parties and witnesses in relation to adultery as distinct from other matrimonial offences, such as cruelty.

An Ancient Court

In these days, when there is so much talk of stream-lining, automation, mechanization and modernization, it is refreshing, to those at all events who like to preserve some of the old customs and traditions for their own sake, to read of an occasional pause in the hurry and bustle for the observance of an ancient ceremony.

The London *Evening News* of April 15 gave an account of the sitting of the ancient manor court of Bideford. A jury of townsmen and townswomen attended. The court is convened by the corporation, which now owns the manorial rights and is, we imagine, a survival of the court leet.

Pageantry is always well to the fore, and, says the report, the traditional snuff-box is passed round, but there is evidently more to it than a pleasant ceremonial. Opportunity is taken for the townspeople to make representations to the corporation, and the jury this year made a number of recommendations, including some about road surfaces, danger at certain road junctions and improved lighting. Appointments were confirmed to the offices of tythingman, way-wardens and a people's warden for the parish church.

Most of the wider jurisdiction of the old manorial courts disappeared when the Summary Jurisdiction Acts led to their being superseded by the justices in petty sessions.

The Attitude of a Prosecutor

It is quite common for a prosecutor to tell the court he does not wish to press the charge, and that he hopes the court will deal leniently with the defendant. Having brought the case into court he feels he has done his duty and perhaps taught the wrongdoer a lesson. The prosecutor who suggests severity is not often encountered, but there is nothing improper in representation made to the court that a particular offence is regarded by the prosecution as serious.

The *Newcastle Journal* recently reported a case in which a prosecutor protested against what he regarded as undue leniency. He was the victim of a theft from his shop by two boys, aged 17 and 15 respectively. The elder boy was conditionally discharged and sent back to his approved school. The prosecutor called out from the public gallery, "He's a bad lad. I object to the sentence." In contrast, the officer in charge of the approved school said the boy had one of the best records in the school, and he would take him back.

We have little doubt that the decision of the magistrates was right, but one can understand the feelings of the victim of an offence who has suffered loss and received no compensation. Probably he does not quite appreciate the effect of a conditional discharge or of an approved school order. If this were explained to him (and perhaps it was) he might feel that the offender had not got away with it.

Another Prosecutor's Plea

A different attitude was shown by the prosecutor in a case which came before the Bristol magistrates and was reported in the *Western Daily Press*. A man, aged 47, who had pleaded guilty to embezzling £216 16*s*. 6*d*., was sentenced to four months' imprisonment in spite of his employer's plea for leniency. The employer said this was the first time such a thing had happened to his firm, and it was felt necessary to place the matter in the hands of the police, but he would like the man to "work his passage" if possible, and repay the firm. They were prepared to take him back; he had been a very good employee, and perhaps the checking system had not been very good.

The defendant was alleged to have said that he had gambled heavily, borrowed money and then taken money to pay it back. He had also taken £5 or £6 a week which he spent on gambling.

Here, again, the attitude of the prosecutor is quite understandable; he had no desire to be vindictive and would have liked to see leniency extended to a man who had proved himself capable of being a good servant. In these days of full employment it is not always possible to replace a man, and that might be a further reason for hoping he would not be sent to prison. However, in cases of serious crime such as embezzlement, the court has to think of the interests of the public, on whose behalf the criminal law acts, and those interests do not always coincide with those of either the prosecutor or the offender.

Driving Disqualification Removed, but Test Remains

Section 7 (3) of the Road Traffic Act, 1930, allows a court "having regard to the character of the person disqualified and his conduct subsequent to the conviction or order, the nature of the offence and any other circumstances of the case," a discretion to remove a disqualification imposed by virtue of a conviction or order of the court provided that application is made after the appropriate period has elapsed since the disqualification was imposed. There is, however, no power subsequently to alter a court's decision under s. 6 (3) of the Road Traffic Act, 1934, that a person convicted of dangerous or careless driving or of driving whilst under the influence of drink be disqualified until he passes, on a date subsequent to the conviction, a test of competence to drive.

This distinction was noted in a report in *The Western Morning News* of April 2, 1958, of an application for removal of disqualification by a 75 year old defendant who had been convicted last July of dangerous driving and disqualified for nine months. The application was granted, but the applicant's advocate pointed out that his client would have to take out a provisional licence in the first instance and take his test at the first available opportunity. Meantime, of course, he would have to comply with the requirements which have to be observed by the holders of provisional licences. The applicant, accepting this position, said that he had no doubt he would be able to pass a test within a day or two.

The fact that an applicant for removal of disqualification has to pass a test before he can obtain a full licence may be one of the factors the court hearing his application could properly take into consideration if the other matters they have to bear in mind inclined them to view the application favourably.

Only a Learner: But he has 72 Convictions

The *Western Mail* of April 2, 1958, contains a report of a case the circumstances of which are, we hope, unique. The report begins "a man with 72 convictions for motoring offences committed in the past two years told —— magistrates yesterday that he was taking his driving test that afternoon."

On the occasion which prompted the report the defendant, a man aged 30, admitted two offences of driving without a licence, one of failing to produce a certificate of insurance and one of "obstructing a police officer by not allowing him to examine his car." He was fined a total of £28 and was disqualified from driving for a year.

It seems almost to be making nonsense of the law if a man can achieve such a record and still be driving a car on the roads. At least, however, he has now reached the stage when, if he drives within the next 12 months, a court will be required on convicting him under s. 7 (4) of the Road Traffic Act, 1930, to impose a sentence of imprisonment unless they think that, having regard to the special circumstances of the case, a fine would be an adequate punishment for the offence. "Special circumstances" in this subsection must be interpreted in accordance with the various relevant decisions of the High Court.

The officer reporting on the defendant's previous convictions said that he had been driving continuously since 1956 without a licence and that there were 13 previous convictions for that offence. He was said to have caused the police indescribable trouble. It is not stated in the report whether he had previously been disqualified on any occasion; if he had not one is tempted to wonder why he had been so fortunate as to escape this obvious penalty for so long.

Small Buses for Rural Areas

One of the effects of the Public Service Vehicles and Trolley Vehicles (Carrying Capacity) (Amendment) Regulations, 1958 (S.I. 1958 No. 472) and of the Public Service Vehicles (Conditions of Fitness) Regulations, 1958 (S.I. 1958, No. 473) is to facilitate the use in rural areas with poor transport facilities of smaller vehicles of the utility type as miniature buses.

It is stated in a Ministry of Transport and Civil Aviation press notice of March 25 that utility vehicles, built to carry 12 seated passengers, are comparatively cheap and the new regulations will allow many of them to be used as "buses" with fewer modifications than have been necessary in the past.

The Conditions of Fitness Regulations consolidate, with amendment, the corresponding regulations of 1941 and the subsequent amending regulations, seven in number, which are listed in the schedule to the new regulations. It is not appropriate here to attempt to summarize the effect of all these regulations, but we can indicate that they make exceptions, in certain of their provisions, for vehicles with a seating capacity for not more than 12 passengers. These provisions concern clearance, side overhang, steering, fuel tanks, width of gangways, height of gangways, seats, driver's accommodation, and communication with driver.

Because of the restricted room in these smaller buses the Carrying Capacity Regulations, which amend the corresponding regulations of 1954, provide that in a public service vehicle with seating capacity for 12 passengers or less, standing passengers are prohibited on any vehicle which first obtains a certificate of fitness on or after April 11, 1958, unless it is a vehicle specially constructed or adapted to carry standing passengers. April 11 is when both sets of regulations came into force. There is also a restriction to a maximum of 15 on the number of passengers carried on public service vehicles with a seating capacity for 12 passengers and a proportionate reduction in the maximum number for vehicles with a capacity of less than 12. The effect of this is to reduce to a maximum of nine the number of children who may be carried at the rate of three children for two adults in pursuance of reg. 3 of the 1954 regulations, and this reduction is provided for by amendment of the said reg. 3.

According to the press notice we have referred to, the Minister believes that there is scope for the use of these small buses in country areas and he hopes that local operators may be found who are willing to run services with them.

Margery Fry

The national press has paid due tribute to the public services of Miss Fry throughout her long life, both in the field of education and in that of penal reform. She had great gifts of intellect and these were matched by a gracious personality and a lovable character. Any gathering or discussion in which she took part was enriched by her counsel. She never sought to dominate others, but her influence was profound. Her mind, still alert and receptive in old age, was never closed to argument, and if, as she pursued a line of thought, she realized it was not helpful she was quick to say "No, that won't do, I withdraw that." Small wonder that when she arrived at a final opinion she was almost always right.

Miss Fry was quick to see through a fallacious argument, and could demolish it in few words. Being possessed of a lively wit, she could often have been devastatingly crushing, but she was never heard to utter a word to wound even the most tiresome opponent. Intolerant of injustice or cruelty, troubled by stupidity, she was yet tolerant of blundering, erring human beings, anxious to help and restore. Her determined efforts in the field of penal reform born of her faith in human nature and her experience and observation, as prison visitor, magistrate and social worker, were based on the principle that the treatment of offenders should always be intelligent and constructive, never merely retaliatory. She had no use for what she once called "the give 'em hell" idea. It would be quite wrong, however, to think of her as an idealist who refused to face facts. She saw the necessity of restraining criminals, maybe by confinement for long periods, but she asked that the possibility of reform, however remote, should never be excluded. Naturally she was firm in her opposition to capital punishment.

Only those who worked with her, or, better still, enjoyed her friendship, know just how much she will be missed. Her presence was always a joy: to some who knew her well it seemed like a benediction.

The New Library

Sir Patrick Spens, Q.C., M.P., the treasurer, declared open the new oaken library of the Inner Temple, at a ceremony on Tuesday, April 21. Sir Patrick spoke of this "great and memorable day" for the Honourable Society, and recalled how the librarian, Mr. E. A. P. Hart, had on his own responsibility, just before the outbreak of war, removed to safety their most precious collection of early manuscripts—dating in some cases from the 13th century. During the Long Vacation, 1940, on September 19, the first bomb hit the clock tower, and then on December 29 incendiary bombs destroyed nearly half the 90,000 books stored there. Of the books destroyed, about 80 *per cent.* had been replaced, and today the grand total of volumes was back to 90,000. Private generosity had made good many of the worst losses sustained by the library.

Delving into the history of the library, Sir Patrick said that it was known to be in existence from 1500 or thereabouts. Few would disagree with him in describing the new library as far more beautiful and convenient than the old—the effect of the simple design and the magnificent craftsmanship is really superb.

The Lord Chancellor spoke on the spirit of comradeship, help and cheerfulness in which the recovery from the blitz had taken place, and congratulated the Honourable Society upon what it had done. He concluded by reminding his hearers of Bacon's observation "A garden is the purest of all pleasures," and saying that a library runs it pretty close.

Endorsement on Conviction for Careless Driving

Section 5 (1) of the Road Traffic Act, 1934, provides that the court before which a person is convicted of (*inter alia*) an offence under s. 12 of the Act of 1930 (which relates to careless driving) shall, unless for *special reason* the court thinks fit to order otherwise, order particulars of the conviction to be endorsed on the offender's licence. It has long been established (*see Whittall* v. *Kirby* (1947) 111 J.P. 1; [1946] 2 All E.R. 552) that a special reason must be one special to the facts constituting the offence, and that a circumstance peculiar to the offender as distinguished from the offence as, for example, that the defendant is a first offender or a professional driver, is not a special reason.

We refer to this because of a report in the *Newcastle Journal* of April 15, 1958, of a case in which "a veteran chauffeur who had driven for 45 years without an accident" was fined £5 for driving without due care and attention. It is stated in the report that the magistrates, "because of his record," agreed not to endorse his licence. The report is only a short one and does not pretend to give full details of what transpired. It may well be, therefore, that there was something in the circumstances of the case which could properly constitute a special reason for not ordering endorsement of the licence, but the mere fact that the defendant had driven for 45 years without an accident is clearly ruled out, as a special reason, by *Whittall* v. *Kirby*, *supra*.

Two Voices are There

We have expressed our views about litter several times; we are moved to return to the topic chiefly by the launching of a new campaign by the Princess Royal in March, on behalf of the "Keep Britain Tidy Group," and by some observations on that occasion by the Minister of Housing and Local Government. Her Royal Highness spoke of the appalling disfigurement of town and country by the discarding of rubbish, and referred particularly to the "plague over the whole area" in places of public resort on the occasion

of large gatherings. A few weeks earlier, Mr. Brooke had spoken to another meeting of the condition of Hampstead Heath, in his constituency, and said that litter dropping was a nasty and foul habit, like spitting, and like spitting must be stopped. At the March meeting he said there was a gap in many people's sense of responsibility. Once they left home, they felt free from any need to maintain civilized standards of behaviour. Sound precept—now for an example. Between the Minister's first and second speeches above quoted, the *Newcastle Journal* reported how the rural district council of Alnwick had desired to place litter bins in certain parishes, as part of the "Keep Britain Tidy" movement. This was found to be "development," within the meaning of the Town and Country Planning Act, 1947, and therefore to require permission from the county council. Like the borough and urban districts of whom we spoke last year, at 121 J.P.N. 605, the rural district council were refused permission by the county council as planning authority, and appealed to the Minister of Housing and Local Government. The Minister upheld the county council, saying that the proposed litter bins would "serve to draw attention to utilitarian objects and thus detract from the appreciation of the street scene as a whole." They would "destroy the setting by introducing an alien feature."

As was said by a member of the rural district council, this reads like a joke. The council regarded litter as a bigger eyesore than the bins. It would be interesting to know whether the Minister regarded the bins placed in the streets of Hampstead by the borough council, and on Hampstead Heath by the London county council, as a bigger eyesore than the litter. Perhaps it is only provincial local authorities whom he regards as incapable of a sensible choice. We read, by the way, in another newspaper that in a Cornish parish "two gaily painted litter bins" were provided by the Women's Institute. One was torn down by hooligans unknown; nothing is said about any attack by the county council. Perhaps (again) it is only locally elected bodies which are deemed incapable of erecting bins without injuring amenities.

Enforcement of Byelaws, etc.

In the same speech at the Princess Royal's meeting, the Minister remarked that a prosecution for contravening the byelaws for good rule and government could be initiated by any person. The same would apply to the Bill now before Parliament, designed to strengthen the law about litter. It was, therefore, "within the power of bystanders to get litter louts taken to court, if they would not clear up the mess they had made." Once more, sound precept—but how is the bystander to proceed in practice?

Prosecution must be started by a summons, which must be addressed to a named person. When the lout goes off in a car, leaving the rubbish from his picnic on the ground, the car number can be noted, and thus the owner can be traced, but the bystander has no means of knowing whether the owner was using it when the offence occurred, and in the more frequent case the person who left the litter goes away on foot. He cannot be arrested by the bystander, who is thus unable to take the first step towards a prosecution. The Minister, indeed, seems to have fallen into the mistake (all too common in matters of this sort) of supposing that the enactment of a law is a final step, instead of merely the first step, towards curing the evil at which it is directed. It is, on the contrary, only too true that the worst offenders will ignore the law unless it is enforced by local authorities and the police—as motorists ignore the law about obstruction of the highway.

Dogs and Dung

What is in substance the same difficulty was discussed by the council of a large city, where the common form byelaw has been put in force, about dogs depositing excrement on pavements. The medical officer of health advised the council that this filth when carried into houses had been known to cause several types of illness among human beings. The chief public health inspector wanted the byelaw printed on the backs of dog licences. (It is, by the way, brought to notice in many towns on litter bins—presumably a painted reminder about ordure is not considered to "detract from the appreciation of the street scene," to quote the Minister's words above.) The town clerk suggested that members of the public should protest when they saw pavements being fouled, but admitted that it happened most often when the dog was running loose. Mr. Brooke's "bystander" could do a little more here than in regard to litter, for most town dogs have collars, inscribed with the name of the owner and his residence. The bystander could, therefore, at the risk of being bitten (and if he was agile enough to catch the dog when running loose), find out who had been *prima facie* responsible for its misbehaviour, and report the culprit to the council.

But this is hardly a practical suggestion, nor do we see any ordinary bystander, even when the dog is not running by himself, accosting the dog's master or mistress, and calling attention to the byelaw.

This byelaw has a curious history. It was first proposed by a London borough council as a byelaw for prevention and suppression of nuisances; as such, it needed confirmation by the Local Government Board. The council had recognized the practical difficulty of controlling dogs running loose, and confined their byelaw accordingly to dogs on lead. The Board, and their successor the Minister of Health, refused to confirm the byelaw for several reasons, and the council thereupon withdrew it. They proceeded however to adopt it under the alternative power "for good rule and government"—byelaws under this rubric not requiring confirmation until the Local Government Act, 1933, and the London Government Act, 1939. After 1922, when the byelaw was first adopted, the precedent was followed in many London and provincial boroughs, so that the Home Secretary felt constrained, when his confirmation became necessary outside London, by virtue of the Act of 1933, and in London in 1939, to accept a byelaw in the same terms. It was, however, pointed out that the mischief as seen by medical men was the same, whether the dog had or had not a leash fastened to his collar, and also (as stated by the town clerk above-mentioned) that much of the mischief is done by dogs running loose; some owners take the dog out for the purpose, but many turn him out alone—when he will normally, from regard to his own safety, use the pavement rather than the roadway. The most recent version of this byelaw therefore imposes the penalty on the person, if any, in actual charge or, if no person is in charge, then on the owner of the dog, unless the owner can show that he was not responsible.

This may be more logical, but it does not go far towards enforcement. The Home Office objected in the byelaw's early days to its enforcement by the metropolitan police, saying it was not their business, but that of the enacting council. The same line is likely to have been taken outside London.

though we suppose a watch committee or a standing joint committee could instruct the police to co-operate with whatever enforcement officers are appointed by the enacting council—if in fact any are appointed. We suspect that this is another law which, like those about litter, is expected to take effect without human intervention.

Accidents in the Home

The Ministry of Health has done well to draw the attention of local authorities to the number of casualties arising from accidents in the home. More than 6,000 persons die each year in England and Wales as a result of such accidents and of these fatalities about 700 are due to burns and scalds. It is estimated that each year not less than 50,000 persons need hospital treatment for burns and scalds caused by domestic accidents. To these figures must be added the number of less serious cases which are dealt with at home. There can be little doubt that the majority of these accidents could be avoided if adequate care was given to the construction, location and handling of the causative agent. Nevertheless, in spite of the publicity which has been given to this subject during recent years the position has not improved. Approximately 80 *per cent.* of the deaths resulting from extensive burns are due to ignition of the victim's clothing. The majority of these accidents occur at the extremes of life—children or the aged. Although a fatal termination is most common in the "65 and over" age group, children are the victims of a large proportion of the non-fatal burning accidents.

In each area a number of organizations are involved but to be of most value the help they give needs to be co-ordinated. The Ministry suggests that an effective way of co-ordinating home safety measures is to foster the establishment of local committees on which are represented local authorities in their various capacities for health, welfare, housing, education and fire services, hospital authorities, local medical committees, area gas and electricity boards and voluntary organizations. It is thought that exchange of information by the representatives of interested authorities and organizations on these committees can be a most useful method of deciding what each is able to contribute to improving home safety.

The setting up of yet one more committee or joint committee is often suggested as the best way to deal with a particular problem. This results in more meetings which are often attended by people who are already on many other committees. The mere establishment of a committee does not however solve a problem unless there is good staff organization and co-ordination at the officer-level. Certainly something must be done to reduce the appalling tragedy of home accidents but is yet one more committee necessary. Much must depend on the keenness of the officials concerned — and especially of the medical officer of health. We should have thought that much could be achieved by co-ordinated official action supported and stimulated by the local authorities and other bodies concerned. The help of the press, and especially the local press, must be sought; and as suggested by the Ministry, advice can be given through local authority officers such as home nurses and health visitors, as well as by social workers generally. The Royal Society for the Prevention of Accidents is very active in this field and special literature is sent periodically to those local authorities which contribute to their funds.

THE "NON-STOP" DRIVER

By A POLICE OFFICER

An original Article by Charles Breaks

Too often we hear a broadcasting announcer concluding a police message just prior to "the news" with the words "the driver of the vehicle failed to stop after the accident."

When eventually undeniable evidence is forthcoming in the shape of a damaged and marked bumper, mudguard, wing, bonnet, or the broken side or head lamp, fragment of clothing, etc., through some accurate lead given to the police by a witness, the deliberate "non-stop" driver is then made to realize what a different complexion an occurrence of this nature takes on when such a foolish course has been knowingly pursued.

The types of "non-stop" drivers usually come within the following categories: first of all, the entirely innocent driver, completely ignorant that he has been involved in an accident and who, when receiving the first intimation of the occurrence, immediately contacts the police and without hesitation furnishes a full and truthful account of his movements relative to the time, date and place on the period in question.

The driver of a stolen vehicle is so often a "non-stop" culprit and in addition to his guilty knowledge it may well be that he is an inexperienced driver or is unaccustomed to the make of vehicle he is handling for the first time and is wrongfully taking away.

Next, the drunken driver, impaired in judgment and road sense, travelling with alcoholic recklessness—but still aware when he has knocked someone down and aware also that if he is interviewed by the police within a short period, his intoxicated condition may probably result in a series of grave charges.

Another category may include a person or persons not wishing to be compromised by the presence of someone in the vehicle with them. This is sometimes the case where a man or woman is involved in an illicit love affair. Many a marriage and many a home has been broken up as the result of an accident during clandestine journeyings and the resultant police inquiry, perhaps for a coroner's information as well as for offences under the Road Traffic Act.

Now and again the youthful "joy-riding" type endeavours to escape his responsibilities by "driving on."

The driver of the vehicle carrying stolen or smuggled goods, motivated by guilty knowledge and the fear of pursuit can exhibit absolute callousness where the life and limb of other road users are concerned—identification of vehicle often being made more difficult by the use of false identification

plates or even a partial disguising of the bodywork of the vehicle.

Then the driver who in ordinary circumstances is law-abiding, kindly, would never hurt anyone intentionally, but suddenly when confronted with the circumstances of an accident in which he is involved with his vehicle, panics and drives on—at that instant psychologically incapable of facing up to the situation.

There is the driver who stops his vehicle nearby the scene of the accident (of which he may have been the cause) goes to see what has happened and finding it of a serious nature, drives away with the hope of escaping identification.

The mentioned types can produce the driver, who, when eventually interviewed by the police, tries to bluff by calmly professing complete ignorance—the line of talk hardly ever varies—" What's that you say, officer ? An accident caused by my car on the by-pass road on Wednesday evening ? Why, I wasn't out with my car on Wednesday evening," and the usual " thought out beforehand " alibi ; not very convincing and soon a very tattered alibi. Followed by every appearance of eagerness to have the suspected vehicle examined ; having made every effort previously to cover up, repair or renew any damaged part—a procedure which may for a time stave off the inquisitive policeman, but will not stave off the forensic expert who, with his scientific knowledge and equipment, will at a later juncture produce undeniable and convincing proof.

As is only to be expected, the night time furnishes most instances of the non-stop driver, but whether by day or night these individuals cause the police hours of inquiry and do in many cases bring death to some injured person badly in need of first aid and prompt removal to hospital.

Where the road accident is concerned, however distasteful may be the circumstances, the act of the Good Samaritan stands every driver in good stead, both in the eyes of the law and humanity in general.

THE BONNY BANKS

At 120 J.P.N. 242 some attempt was made to define what lawyers mean when they speak of river banks. The closest approach which could then be made was by reference to an American case, that of *Howard* v. *Ingersoll* (1851) 17 Ala 78, which was to the effect that river banks are the elevations of land which confine the waters in their natural channel. This did not seem to carry the matter far, and fell short of providing a satisfactory definition, but, since the article referred to, the Court of Appeal in *Jones* v. *Mersey River Board* [1957] 3 All E.R. 375, has thrown a little more light on this subject.

That case came before the Lands Tribunal in the first instance as *Jones* v. *Mersey River Board* (1956) 8 P. & C.R. 103, and subsequently went on appeal to the higher court. Although the decision of the latter is the one to be followed, it is felt that some of the points raised before the tribunal are interesting enough to permit a brief mention of what happened in that court, as well as in the Court of Appeal.

It might be thought that it was not important anyway that the expression " banks " should have an exact and accurate label applied to it. On the contrary, this is just what is needed. Ever since the Land Drainage Act, 1930, came into operation, drainage boards (since reclassified—with two exceptions—as river boards by the River Boards Act, 1948) have been industriously maintaining and improving their " main river " watercourses all over the country, and occasionally a riparian owner whose land has been affected by such work makes a claim against the responsible board on the grounds of " injury sustained by reason of the exercise by the board of its land drainage powers," as he is entitled to do under s. 34 (3) of the Act of 1930.

One aspect of these claims more frequently than not concerns the power of the board under s. 38 of the Act to deposit spoil taken from the river bed on " the banks of the watercourse " ; queries which arise in this connexion are " how wide is a bank ? " and " to what depth from the river along the bank can spoil be spread ? " or more simply " is this a bank in this particular case ? " The answers to such questions have an important bearing on the *quantum* of the claim.

In the *Jones* case, the claimant demanded compensation under s. 34 (3) for injury he had suffered as a result of the river board's depositing on his land spoil removed from the adjacent river in the course of land drainage works of widening and improvement, in accordance with powers conferred on the board under s. 38 (1) of the Act. The matter came before the Lands Tribunal for the disposal of a preliminary point of law, whether s. 38 (1) enabled a drainage board to deposit spoil on the banks of a watercourse without payment of compensation for injury to the owner of the land by such deposit. A further point at issue was what interpretation could be placed on the word " banks " in s. 38 (1), and it is this aspect of the case with which this article is concerned.

It was contended for the claimant that the area of land on which the spoil had been placed could not be described as " the banks of a watercourse," since in places it extended to a depth of 20 *yds.* from the edge of the stream and covered an area of over two acres. Counsel for the river board submitted that the meaning to be given to the word " banks " was one of fact and degree, dependent upon the circumstances of each case, and should not be defined without full consideration of all the evidence in a particular case.

In pronouncing the decision of the Lands Tribunal, Mr. Erskine Simes said that what was meant by the " banks " in s. 38 (1) was far from clear, and that the definition in s. 81 (the interpretation section of the Act of 1930) afforded little or no assistance in construing the subsection. The case of *North Level Commissioners* v. *River Welland Catchment Board* (1938) 102 J.P. 82 (which dealt with banks under s. 81) had been referred to as showing that some limitations must be put upon the word, but it did not assist. Nor did the expression have the wide meaning which it had when Darling, J., in *Cheshire Lines Committee* v. *Heaton Norris U.D.C.* (1913) 76 J.P. 462 (where the meaning of " banks " in s. 30 of the Public Health Acts Amendment Act, 1907, had been considered) said, " I am very much inclined to think that the ' bank ' mentioned in s. 30 is not what we usually call the banks of a river, as when we say a person lives on the banks of the Thames, or that he keeps his flocks on the banks of the Danube or anything of that kind . . . if one speaks of the banks of the river in that sense, it is a much wider thing ; I think it would go beyond the footpath and might go a mile inland ; the bank cannot be limited to the little strip between the footpath and the river."

An accurate definition as possible of what was generally understood to be the bank in its limited sense had been given in the American case of *Howard* v. *Ingersoll, supra* (cited with approval by Romer, J., in *Hindson* v. *Ashby* (1896) 60 J.P. 84) that "the banks of a river are those elevations of land which confine the water when they rise out of the bed." The word bank had in its natural connotation the idea of a slope, and the Tribunal had formed the view that in s. 38, limiting as it did the general right to compensation under s. 34 (3), the word "banks" should be given that limited sense.

The second stage of the *Jones* case emerged when the river board appealed against the limited construction placed on "banks" by the Lands Tribunal, and Jones cross-appealed on two other points. The appeals duly came before the Court of Appeal.

Jenkins, L.J., regarded the question whether a given piece of land near to or adjoining a river was part of the river bank as being a question largely of fact, to be decided in each particular case by reference to the size and habits of the river, the geological composition of the land, and the level of the land as compared with the river and, no doubt, other circumstances of that kind. He referred to the definition of "banks" given in the American case (already quoted) and thought that that seemed to be restricted by the introduction of the idea of a slope, which was not an essential feature of that which the term "banks" conveyed in its natural connotation when used in relation to a river.

Counsel for the river board had pointed out the impossibility of applying that definition in a practical manner, since spoil could not be deposited on a steep slope or vertical bank. But he (Jenkins, L.J.) did not read the Tribunal's decision as narrowing the meaning of "banks" quite to that extent; he thought the meaning adopted by the Tribunal was in reality the definition given in the American case, with a qualification in the shape of the introduction of the conception of the slope as an essential element.

Of the various authorities referred to, only certain observations in *Monmouthshire Railway and Canal Co.* v. *Hill* (1859) 23 J.P. 679 gave any real assistance. There Martin, B., had said, "When you speak of the banks of a canal, you mean the land on either side of the canal which confines the water. There are banks of the canal, therefore, on both sides of it, and when you speak of the banks, you mean the substantial soil which confines the water . . ."

Jenkins, L.J., went on to say he adopted in substance the definition in the American case and the view expressed to the same effect by Martin, B., and held that the expression "banks" in s. 38 (1) meant so much of the land adjoining or near to the river as performed or contributed to the performance of the function of containing the river. He emphasized that the application of this definition in any particular case must depend to a great extent on the particular facts of the case—the character of the river, the character of its surroundings and, no doubt, other considerations as well. When a land drainage Act referred to the banks of a river, one supposed that the banks referred to were those banks which were material from the land drainage point of view, that is to say the banks which contained the river. On that conclusion the word "banks" could not be limited to the slope or vertical face where those banks actually met the river, but must include the land adjoining or near to the river to the extent to which it served the river. The appeal of the river board therefore succeeded.

There is another case concerning banks, which can be dealt with more briefly. *Oakes* v. *Mersey River Board* (1957) J.P.L. 824 was also a reference to the Lands Tribunal on a claim for compensation, one aspect of which related to the deposit by the river board of spoil on an artificially constructed river bank. The Tribunal decided that such a bank fell within the expression "banks" in s. 38.

DOMESTIC HELP

This note deals only with the particular kind of domestic help provided under s. 29 of the National Health Service Act, 1946. It excludes therefore help given, no matter how willingly, by our readers to their wives and families, and assistance engaged to make such help unnecessary.

It will be recalled that s. 29 enables a local health authority (a county or county borough council) to make such arrangements as the Minister of Health may approve for providing domestic help for households where such help is required owing to the presence of any person who is ill, lying-in, an expectant mother, mentally defective, aged, or a child not over compulsory school age. The authority may, with the approval of the Minister, recover from persons availing themselves of the domestic help so provided such charges (if any) as the authority consider reasonable, having regard to the means of those persons. In pursuance of these enabling powers local health authorities submitted schemes to the Minister which, on being approved, now form the basis of their operations.

While it is true that before the inception of the National Health Service local authorities were empowered, under a 1944 Defence Regulation, to provide help for the sick and infirm, and that welfare authorities had for many years been able to provide domestic help as part of their maternity and child welfare services, it was only after the passing of the 1946 Act that the service grew to the commanding stature and comprehensive character which now distinguish it. In the year 1949–50 the expenditure per 1,000 population falling on public funds for the provision of domestic help was £55: in 1955–56 it was £120, and, with the single exception of the ambulance service, it had become the most expensive of all the local health services.

The service has grown and must be expected to continue to do so in line with the growth in the aged section of the population, and possibly for other reasons which are mentioned later. In discussing the pattern of future development of the domiciliary, hospital and local authority services for the aged the Guillebaud Committee* said: "The first aim should be to make adequate provision wherever possible for the treatment and care of old people in their own homes where they can continue to be happy and useful members of the community in touch with their relatives and neighbours. This is a matter of providing the right type of housing and adequate domiciliary services (*e.g.*, health visitors, home nurses, domestic helps, etc.) working in close association

*Report of the Committee of Inquiry into the Cost of the National Health Service. Cmd. 9663 1956.

with the general practitioner, the hospital geriatric services and the voluntary organizations. The development of the domiciliary services for this purpose will be a genuine economy measure, and also a humanitarian measure in enabling old people to lead the life they prefer."

But of course it is not only in respect of the old that the services of domestic helps are required. In 1955 Kent county council set up a family help service as an extension of the domestic help service. The service was limited to families with two or more children where an application had been made to the children's department for the children to be taken into care during the temporary absence of the mother and the period of help was limited initially to not more than three months. Most cases were those where the mother had to enter hospital, either for confinement or for an operation. The service has proved successful, indeed the county medical officer in his report said that he believed its introduction to have been one of the most significant advances made by the health committee since the inception of the National Health Service in 1948. Incidentally, an examination of the cost showed that it was just under half that which would have been incurred if instead of providing domestic help the children had been taken into the care of the county council.

Other health authorities have applied local variations for various purposes. For example, in Buckinghamshire, a "Friendly Neighbour" scheme operates, some elderly people in villages being helped by neighbours who, for this service, are paid a flat weekly rate instead of the hourly rate normally paid to home helps.

The increased use made of the service since its inception and demands for its further extension have led many health authorities to look closely at its cost and to consider possible revision of the division of the burden between the user of the service, the taxpayer and the ratepayer. Some have sought to charge the taxpayer more in two ways. The first proposal has been for an increase in the 50 *per cent.* grant on the grounds (anticipating the Guillebaud Committee) of the advantages to be gained from caring for the aged in their own homes: the arguments have not failed to stress the resultant savings in the cost of hospital beds, in nursing staffs, and in accommodation required under part III of the National Assistance Act, 1948. The Guillebaud Committee formed the impression that the strongest limiting factor on the development of the service was lack of finance but thought that a small increase in the grant to, say, 60 *per cent.* would not have any material effect, and agreed with those local authority representatives who believed that a rate of grant over and above 60 *per cent.* would not be in the best interests of local government.

The point is now only academic because from April 1, 1959, all health and welfare service grants will be abolished, but it is of great interest to record that the Guillebaud Committee thought that "the lack of any Exchequer grant towards the running costs of local authority residential accommodation for the aged will become increasingly an obstacle to the smooth development of the hospital and local authority services, and may be expected ultimately to distort the pattern of the service as a whole."

The second argument has been with the National Assistance Board. Numerous representations have been made that grants payable by the Board to necessitous persons to enable them to secure the services of domestic helps should be paid direct to the health authorities. The Board have refused to comply with these requests however, stating that in their view the applicant should be left to lay out his money for himself: it was also pointed out that s. 8 (2) of the National Assistance Act, 1948, only provides for payment to a third party where this is in the interests of the applicant.

And so we come to the third source of revenue, namely, payments by the beneficiaries. Circular 100/1948 gives Ministerial approval to the making of charges on the basis that the standard charge per hour or per day shall not exceed the actual cost, including wages, insurances, allowances for travelling time, retaining fees (if paid) and organizational and clerical expenses. It is for the health authority at its own discretion to determine in each individual case whether any, and if so what charge (within the limits of the standard charge) is reasonable, having regard to the means of the person concerned. Guidance was given to local authorities in 1948 by the County Councils Association and the Association of Municipal Corporations who prepared a suggested scale of assessment based on the two principles that domestic help should not be refused to those "whose need is clamant" but who cannot afford to pay, and that because of the special characteristics of the service it is particularly desirable to see that householders who can afford to pay do so. Local decisions were made and collections began: the results showed wide discrepancies between authorities. In some areas collections were equal to 40 *per cent.* of expenditure while in others the figure was only five *per cent.* It was not, of course, entirely the different bases of assessment which caused such variations: the type of persons to whom the service was supplied and their relative wealth or poverty were also important influences. The one thing that most collections have had in common since the early days is that each year has shown a decline in the amount collected, expressed as a percentage of total expenditure: many of these falls have been large, for example, from 17 *per cent.* in 1950–51 to six *per cent.* in 1956–57. The exceptions to this trend are those authorities who impose a minimum charge for the service of, say, 2*s.* 6*d.* or 5*s.* a week: in these cases the proportion of income to expenditure has risen, usually from the date of imposition of the minimum charge. In most authorities more and more help is required for the aged who, in great numbers, have no income apart from old age pensions and/or National Assistance Board grants. The practical result of the minimum charge is therefore to cause the Assistance Board to augment their payments so that the beneficiaries can pay the minimum charge imposed by the health authority. This series of transactions is of no benefit to public funds, merely increasing unproductive administration costs.

Apart from this activity those authorities who have taken the trouble to ascertain the cost of collection will have found that it is very high, possibly amounting to 30 or 40 *per cent.* of amounts collected. The resultant net figure is in a number of cases so small that the question may seriously be raised whether it is worth while continuing collections at all. (It will be remembered that some authorities in 1948 decided that they would make no charges for certain health services.) The question is bound up with growth of the service. Should it be allowed to expand unchecked or only within limits? If policy decrees the latter an analogy with the economic position of the country presents itself. In the national sphere expenditure may be limited by a high bank rate and dear money, or alternatively by direct controls: in the domestic help service it can be done by making those pay who are able or by limiting the number of helps provided. In some areas both factors now operate because helps cannot be recruited up to the full number the authority is prepared to provide.

MISCELLANEOUS INFORMATION

BUCKINGHAMSHIRE WEIGHTS AND MEASURES DEPARTMENT

The number of self-service shops increased from 1950 to 1957 by 500 *per cent.* So states Mr. Davenport, chief inspector for weights and measures for Buckinghamshire, in his latest report, and he discusses the effects of self-service and pre-packing upon the trader and the housewife. Although pre-packing has increased remarkably in recent years, it is by no means new. There is a quotation from *The Times* of 1914: " the impression one gets on entering the grocery department of any large store that it is possible to obtain the great bulk of our food supplies in packets and tins, is to a very large extent a correct one." This is now true of many shops beside the large stores. Self-service has helped to answer the problem of shortage of assistants; refrigeration and the use of polythene have helped in providing labour-saving devices for the kitchen, in short by pre-packing, pre-cooking and preserving. All this is of importance especially when housewives have employment outside the home.

Of 64,284 articles of food examined, consisting of loaves of bread, butchers' meat, milk and a great variety of pre-packed foodstuffs, only 1·18 *per cent.* were found to be deficient in weight or measure, compared with 1·06 the previous year. There are various unpleasant examples of foreign substances in food, including pieces of mortar in bread, metallic lead in sausage, and a 1½ *in.* nail in a dough cake and a used surgical bandage in a loaf of bread. There were 14 instances of broken glass in school milk. Mr. Davenport thinks the one real answer is the waxed carton or polythene container for milk, but he realizes that this would lead at first to an increase in costs, and that this may prove an obstacle.

Buckinghamshire has always been advanced in the work of promoting herds of cows free from bovine tuberculosis. One matter connected with milk which troubles Mr. Davenport is that wholesale transactions in the sale of milk still remain outside weights and measures control. There is, he says, feeling between some milk producers and receiving dairies about this particular matter. The milk producer often assesses the amount of his delivery to a receiving dairy by reference to rough gauge marks inside the churn, or to a weighing machine which is not an approved type under the Weights and Measures Acts, but as the weight of the milk is always ascertained at the receiving dairy on an approved weighing machine and there converted into gallons on a ratio stipulated in the Milk Marketing Board's contract it is not surprising that there is lack of agreement between some of the producers and the dairies. Inspectors are sometimes invited to act as umpires between aggrieved parties, but the position is more often than not most unsatisfactory.

There has been an improvement in regard to the sale of coal and coke. Eight thousand five hundred and sixteen bags and loads of coal and coke were examined during the year and 2·54 *per cent.* of coal against 5·54 *per cent.* the previous year were deficient. Seven point two five *per cent.* against 7·33 *per cent.* of coke the previous year were found to be short weight.

An aspect of the work of the inspectors which does not usually figure prominently in these reports is its relation to sports and competitions. This report refers to the growing interest in sport and points out that where records are concerned they must be determined with great accuracy if they are to be accepted as authentic by the authorities concerned. In fact, the equipment and instruments used are sometimes far from correct. In some tests carried out by the inspectors considerable inaccuracies were revealed in both new and used implements. Of 14 pieces of new equipment only three items were correct on initial test; some were incapable of adjustment. The worst example was a women's discus which had been used just previously at an Amateur Athletic Association championship meeting, and which showed an error in weight of 4·34 *per cent.*

BRIGHTON PROBATION REPORT

This report gives prominence to juvenile delinquency—which, sad to relate, passed all records for Brighton in 1957. The increase, we are told, is particularly marked in the adolescent group, and is accompanied, significantly enough, by a decrease in the number of youths and girls attending youth organizations. Out of about 12,000 potential members only 2,106 have taken the trouble to join one or other of the several available organizations catering for young people. "On the other hand," says the report, "it was estimated that coffee houses were drawing between 400 and 500 youngsters a night."

Now coffee houses are all very well, but they are not places of *activity*. It is rather depressing to contemplate the wasted opportunities for useful and interesting recreation and study represented by these figures—which, we are sure, could be paralleled by most big towns. Moreover, to quote this admirable report once more ". . . it is common knowledge that a few (coffee bars) are unhealthy dungeons where the immature attempt to pass off infantile behaviour as virile, or mysteriously wicked. Acts of delinquency are known to have been planned in these dens, and the public are being involved in brawls emanating from these places: so a situation arises in which . . . " probation officers have to reclaim youth in a society which undoes their work the moment it passes from their hands."

This needs saying—and it needs publicity. Social reformative work receives great encouragement from the central and local authorities, never more so. But it is gravely handicapped by a tremendous amount of apathy amongst the general public, and, in the case of juveniles, amongst parents themselves.

As this report goes on to say, it is all very well asking, as all probation officers do ask, " what do they expect from us ? " . . . it is equally important that youth should reply with some response, so that the probation service, in exchange for its difficult and often misunderstood labour, can legitimately expect some mutuality in what should be a constructive social relationship.

Diplock House, that admirably run hostel, is within the Brighton jurisdiction. The senior probation officer gives us some pertinent paragraphs on the working of probation *vis-à-vis* the hostel service, and emphasizes—quite rightly—that great care should be exercised by courts when imposing a condition of residence at such a place. More harm than good can ensue if the wrong selection is made.

Overall, the general volume of work remains about the same, though social inquiries show a decline.

Mr. Saunders is to be congratulated on a well-arranged report, full of relevant comment and reasonable suggestions.

HOUSING FOR THE AGED IN CANADA

When the Minister of Housing and Local Government is urging local housing authorities in this country to make further provision for the aged it is interesting to learn from a recent issue of Canada's *Health and Welfare* that the problem is also receiving special consideration in that country. It is agreed there that one of the most urgent needs is to provide low rental housing accommodation. Such housing has been built in many parts of Canada largely by voluntary groups assisted by provincial grants in some provinces, and by federal loans up to 90 *per cent.* of the cost. Normally loans are only given where the majority of self-contained dwellings are intended for couples. In British Columbia a provincial grant of one-third of the cost may be made to non-profit organizations which are themselves able to meet at least 10 *per cent.* of the cost. In Manitoba grants are made towards the cost of housing units for persons—single or married—of 65 years or older. In Ontario grants are available but only if the projects have been sponsored or approved by a municipality. In some provinces municipalities are permitted or required to make special tax exemptions through land grants or the establishment of rent reduction funds. There are residential homes and institutions for the aged who are incapacitated and some for old people who are well or who, while ailing, do not require institutional care. But, as in this country, it is now considered to be the better policy to help old people to continue to live in the community.

SOCIAL DEVELOPMENT IN CYPRUS

The annual report of Mr. W. Clifford, director of welfare services in Cyprus, for the year 1956, has now come to hand. When one reads the report one realizes that it is remarkable that so much work has continued under difficult conditions and that there is nothing remarkable about some delay in producing the report. The year 1956 was characterized by much unrest and disturbance of normal life, but how encouraging it is to read that it has been possible to show that in 1955 and 1956 there was another side to the life of the people of Cyprus and that despite the most adverse circumstances, there was a very definite advance towards better social conditions.

In Cyprus the Government Welfare Department deals with practically the whole of the various social services, which are not divided among different departments as in the United Kingdom. Fortunately the Welfare Department has for some years past enjoyed the confidence of people generally, whatever their

community or political outlook, and has been able to undertake additional emergency duties as they arose.

There is an interesting description of the welfare work among children. There are not many voluntary organizations and institutions in the island dealing with child welfare and so most of the work is done officially. School committees usually organize summer camps for children, but in 1956 this was impossible. Generally, however, 1956 was a year of great progress in the field of child care, and the Welfare Department was able to achieve its aim of a children's home in each district, in co-operation with the local authorities and committees. The boarding out system also was extended and improved. In 1956 a new Children's Law was enacted which is a composite of the United Kingdom Children and Young Persons Act, 1933, certain provisions of the Public Health Acts, and the Children Act, 1948. Children in Cyprus are thus given care and safeguards similar to those provided in this country.

Work among adolescents in various youth organizations was much hampered by the disturbed conditions, and indeed some of the adolescents were involved in terrorist activities. The strong political complexion of sports clubs emerged clearly.

For the aged in Cyprus there are no old age pensions of the social insurance or non-contributory type. A Social Insurance Law was enacted in 1956, and will provide contributory pensions in a few years' time, but there are no schemes for non-contributory pensions even for the very old, and for these public assistance has to make provision. It is satisfactory to learn, however, that the support of aged parents in need by their children, is recognized as a moral duty, and that it can be enforced by law.

In Cyprus there are no juries and no lay justices. Probation officers are attached to the courts as in the United Kingdom and carry out all the social work of the courts. They are available to the Judges for a variety of tasks and are often able to help with matrimonial reconciliations. The probation officers are in fact all-purpose welfare officers.

WALSALL FACTS AND FIGURES

This pocket sized publication continues to hold its place among the best six booklets of this kind issued by local authorities. Usually before a writer can inform he must interest his readers and this borough treasurer, Mr. D. H. Charlesworth, M.B.E., F.I.M.T.A., F.S.A.A., admirably succeeds in doing: in addition he has provided a most handy and useful pocket reference book for members of his council.

Walsall is a town of 115,000, still growing but quite slowly in the last few years. It levied a rate of 15*s.* in 1956–57 with a penny rate producing £4,600. Loan debt continues to rise more rapidly than population: at March 31, last, it amounted to £14,300,000. The gas and electricity undertakings formerly owned by the borough are of course gone and only the transport undertaking is left. It has followed the chequered financial course to which so many such undertakings seem destined: in six years it has made profits and losses in equal numbers. Nineteen fifty-six–fifty-seven produced a profit of £37,000.

The borough council provided services during the year at a total cost of £2,600,000 of which 32 *per cent.* fell as a charge upon the ratepayers. The effect of government grants is well shown in this comparison of two services:

	Gross Expenditure	Grants	Other Income	Charge to Rates
	£	£	£	£
Education ...	1,249,000	786,000	78,000	385,000
Highways ...	123,000	3,000	17,000	103,000

In common with many other authorities the total mileage run by ambulances in the year was less than in 1955–56 but cost per mile rose from 3*s.* 3*d.* to 3*s.* 10*d.*

Walsall corporation have always been keenly interested in the development and improvement of the borough and to assist in such work have from time to time purchased a large amount of property including an airport, an hotel, a shopping arcade, and have erected a large central bus station. It is pleasing to note that these activities resulted in a net credit to rates of £5,600 for the year.

The corporation markets are another successful undertaking, having produced a surplus for the year of £4,700.

Mr. Charlesworth states that Walsall has one of the oldest police forces in the country. It can also be said, from an inspection of the return of police force statistics issued by the societies of treasurers, that it has one of the least costly. Cost per 1,000 population in 1956–57 was £1,546 compared with the average of all boroughs of £1,911.

Housing continues to be of major importance. At March 31 the council had erected 14,100 dwellings (the total number of all rated hereditaments in the town is 38,200). An assisted rent scheme has been in operation since January 28 last whereby a maximum and minimum rent charge is fixed for each type of house, the actual net rent payable depending on the tenant's income. For example the maximum rent for three-bedroom non-parlour houses is 16*s.* 9*d.*, the minimum 9*s.* 3*d.* This scheme naturally had little impact on the figures for the year 1956–57, which showed that tenants' rents met two-thirds of housing expenditure, the remainder being found by taxpayers' subsidies (25 *per cent.*) and ratepayers' subsidies (nine *per cent.*). A different picture should be presented in 1957–58.

COUNTY BOROUGH OF HASTINGS: CHIEF CONSTABLE'S REPORT FOR 1957

Although at the end of the year there had been a decrease of two in actual strength (127) there were three other appointments made during 1957 which were to take effect on January 1, 1958. These would bring the strength to 130, only three short of the authorized establishment of 133. Appreciation is expressed of the work of the special constables who performed 3,948 hours of duty and responded excellently whenever called upon.

Under the heading of training the chief constable writes, "the need for constant training in the various aspects of police duty never diminishes, and as a police officer from his first day on the beat until the day of his retirement must usually act alone and on his own initiative emphasis must be on the efficiency of the individual." We wonder whether those with no connexion with the police force appreciate how true this is and how much the public expects, and gets, from the individual policeman.

There was a decrease in recorded crimes from 491 in 1956 to 475 in 1957. Sixty point six *per cent.* were detected (288), 102 persons were prosecuted of the 197 who came to the notice of police for indictable offences. Thirty-two juveniles were prosecuted and 71 were cautioned. The corresponding figures for 1956 were 49 and 41. It is recorded that during the past three years 128 juveniles have been cautioned, for crime, by the chief constable or his deputy and up to the time of the report only seven of these had again come to the notice of police.

For non-indictable offences there were 49 prosecutions of juveniles (34 in 1956) and 510 of adults. A further 393 persons received written cautions, about 75 *per cent.* of which were for minor traffic infringements, and 72 others (including 47 juveniles) received personal warnings from the chief constable or his deputy.

There were 19 more accidents, giving a total of 481. The percentage of child casualties dropped to 16, the lowest figure for the past 12 years. This class shows the only appreciable reduction in casualty figures. There was a drop of 1·1 *per cent.* in pedal cyclist casualties, brought about by a decrease of four *per cent.* amongst child cyclists. This must be attributed to the continued efforts by the police in visiting schools to examine cycles and to give road safety talks and advice.

There were 35 charges of drunkenness during the year, including one of driving under the influence of drink.

It is pleasing to note the report of assistance given by police to a man "with an unfortunate background" who called on them in desperation and who is now re-established with a new outlook on life.

COUNTY BOROUGH OF NORTHAMPTON: CHIEF CONSTABLE'S REPORT ON LICENSING MATTERS FOR 1957

There was a decrease of five, to 320, in the number of licences granted in 1957. One hundred and forty-five are "on" and 175 are "off" licences. Extensions of permitted hours were granted on 415 occasions, nine more than in 1956.

There were 71 charges of drunkenness and 10 prosecutions of motor vehicle drivers who had had too much to drink. This latter figure was three fewer than in 1956. Eight of the 10 were convicted, one was dismissed and the other was still outstanding at the end of the year.

The figure of 71 charges showed a reduction from the 1956 figure which was 90, and it is noted that 34 of the 71 were not resident in Northampton.

The chief constable calls attention to the large number of off-licences which includes 108 beer off-licences. He states that this is far in excess of the number in other towns of similar population, and that it would seem reasonable to ask whether they are all necessary for the convenience of the public.

REPORT OF NATIONAL PARKS COMMISSION PUBLISHED

"Concern at Threats to Landscape Beauty"

In their eighth annual report, the Commission speak of the ever-present threats from many quarters to the slender reserves of our unspoiled countryside.

During the year, the Commission have pressed on with the designation of areas of outstanding natural beauty under s. 87 of the Act, so that further areas of fine landscape can enjoy the special protection which it is the object of the Act to afford. The first areas have been established—in the Gower Peninsula, in Lleyn, and the Quantock Hills—while the Order designating the Surrey Hills awaits confirmation by the Minister of Housing and Local Government. The Commission are actively engaged in the designation of sections of the Dorset coast and its hinterland, areas of Cornwall, Cannock Chase, the Northumberland coast, sections of the north and south coasts of Devon, the Sussex Downs, the Shropshire Hills and the Malvern hills. They also announce that, when their programme allows, they will consult with the local authorities about the designation of the North Downs, an area comprising the south-east part of Devon and the Blackdown Hills in Somerset, and the Hampshire Downs.

The designation of the Brecon Beacons National Park during the year brings the total number of national parks up to 10, covering about one eleventh of the total area of England and Wales.

The report records a number of actions which the park planning authorities have taken, or plan to undertake, in the parks. Although the existing Government embargo on new capital expenditure has postponed, for the time being, many of the creative projects which have been planned, the Commission are glad to note that the Ministry of Housing and Local Government have felt able, in a few instances, to enable park planning authorities to proceed with land acquisition and with the actual work of tree planting or car park construction, so that some impetus may be maintained in creative national parks work.

The litter nuisance has continued to give much concern to the Commission and to the park planning authorities. The Commission have, in many ways, brought before the public their maxim "Take your Litter Home," but say that "it is abundantly clear that unceasing and widespread propaganda is required if public behaviour is to be improved."

The Commission report upon a number of proposals for development affecting natural beauty in national parks and other beautiful areas. Some of these have been projects of great magnitude such as the developments at Milford Haven where the Commission have secured several safeguarding conditions, which will help to mitigate, in some measure, the serious effect which these large-scale industrial uses must have on the natural scenery of the Pembrokeshire Coast National Park.

The Commission have been much concerned at the effect which the Government's nuclear power programme, seeking sites in isolated places and where large quantities of cooling water must be to hand, may have upon national parks or other areas recognized as of high landscape quality. This anxiety arises, they say, "not only from the location of the stations themselves, but also from the siting of the large pylons and transmission lines necessary to connect the stations with centres of population or the grid. The scale and nature of such development is wholly alien to the very purpose of national parks, which is the preservation of the distinctive rural character of fine landscape for the enjoyment and recreation both of this present generation and of future generations of our people. We hold that the siting of large-scale industry in national parks should be sanctioned only on overriding and inescapable national necessity, and after alternative sites outside national park areas have zealously been sought. Unless there is such proved national need, there is in our opinion no justification for sacrifice of the essential character of unspoilt country, which is itself a real, if intangible, national asset."

In particular, they are concerned at the project to establish a nuclear power station in the Snowdonia National Park, on the north shore of Trawsfynydd Lake, and have urged the Minister of Power, the Minister responsible for authorizing the development, to hold a public inquiry, jointly with the Minister of Housing and Local Government. The Minister has since acceded to this request and an inquiry was held on February 12.

MAGISTERIAL LAW IN PRACTICE

Daily Mail. March 18, 1958.

I HATE BABIES—WHO'LL TAKE MINE?

Mother Seeking Home for Child No. 4

By *Daily Mail* Reporter

Twenty-five year old Mrs. Sheila Winkley, mother of three children, wants to give away the baby she is expecting in July.

She said last night: "I hate babies. I don't even want to bring it home from the hospital.

"I'd rather go to prison than go through all the mess and bother of bringing up another.

"Mothers are so sentimental and soppy about babies. How can anybody honestly claim they are beautiful? If you've seen one you've seen them all."

Mrs. Winkley's two eldest children, David, aged seven, and Annette, aged three, live at home. A 21 month old daughter is in a county council home.

Said Mrs. Winkley: "The way I see it is that we are giving the new baby a better chance of love and happiness.

"If I have to bring the baby up I shall feel resentful every time I have to bathe it or wash nappies. Babies are such horrors."

Mrs. Winkley has been married eight years. Her husband Roy, a £15-a-week engineer, joined in the conversation with: "Baby rabbits are much nicer."

"Of course they are," said his wife, as she talked in their council home in Eldercroft Road, Broomwood Estate, Timperley, Cheshire.

The Winkleys insist that they cannot afford another child.

Mr. Winkley said his rent is £1 10s., housekeeping £7 to £8, and hire purchase £3.

Last word from Mrs. Winkley, as David and Annette watched Popeye on television: "We are a very happy family, and I don't want anything to spoil it."

It was widely reported in the press that Mrs. Winkley had written to a Manchester evening newspaper saying she wanted to find a home for the fourth baby she was expecting. Two days later it was reported that she had received over 100 letters, about 80 from people wanting to adopt the child.

Section 38 of the Adoption Act, 1950, provides that any person who causes to be published or knowingly publishes an advertisement indicating:

(*a*) that the parent or guardian of an infant desires to cause the infant to be adopted; or

(*b*) that a person desires to adopt an infant; or

(*c*) that any person (not being a registered adoption society or a local authority) is willing to make arrangements for the adoption of an infant;

shall be liable on summary conviction to a fine not exceeding £50.

Section 38 has not been contravened in this case. The child has not yet been born, so that there is no "infant" within the meaning of the section. (*See* the definition of "infant" in s. 45.)

Daily Express. April 2, 1958.

POLICE CHIEF'S DAUGHTER BEATS POLICE

Express Staff Reporter

A pretty, 20 year old policeman's daughter listened politely in court yesterday when a summons was read out.

It accused Margery McKay, of Avondale House, Mortlake, of riding her bicycle on a footpath.

Then Margery, in a small, nervous voice, said: "I'm afraid the section under which I have been summoned doesn't cover the offence."

Mortlake magistrates leaned forward. Their clerk looked puzzled.

No Mention

Then Margery ("my knees were knocking") explained that s. 54 of the Metropolitan Police Act—prohibiting the riding of a sledge on the paths or leaving your horse there—made no mention of cycles.

The clerk sent for a guide. Then he said: "The section mentions carts or carriages—which could include bicycles."

The chairman, Mr. C. W. Barrell, said the case would be dismissed.

Margery's father is ex-inspector Lewis McKay.

Under s. 54 (7) of the Metropolitan Police Act, 1839, "every person who shall lead or ride any horse or other animal, or draw or drive any cart or carriage, sledge, truck, or barrow, upon any footway or curbstone, or fasten any horse or other animal so that it can stand across or upon any footway," within the limits of the Metropolitan police district, is liable to a penalty of not more than 40*s*.

Under s. 72 of the Highway Act, 1835, which is of general application, it is an offence, punishable by a fine not exceeding 40*s*., to wilfully lead or drive any horse, ass, sheep, mule, swine, or cattle, or carriage of any description, or any truck or sledge, upon any footpath or causeway by the side of any road made or set apart for the use or accommodation of foot passengers. In *Taylor* v. *Goodwin* (1879) 43 J.P. 653, it was held that a bicycle was a carriage within the meaning of the Highway Act, 1835.

Bicycles, tricycles, velocipedes and other similar machines are now declared to be carriages within the meaning of the Highway Acts, by s. 85 of the Local Government Act, 1888.

Under a special Act, 7 G. 3, c. lxiii, the owner of a bridge was authorized to collect tolls for, among other things, "every chariot berlin hearse chaise chair calash waggon main dray cart car or other carriage whatsoever with four wheels the sum of four pence and with less than four wheels the sum of two pence." It was held in *Cannan* v. *Earl of Abingdon* (1900) 64 J.P. 504, that a bicycle was a carriage with less than four wheels and liable to toll under the Act.

By s. 12 of the Licensing Act, 1872, "every person . . . who is drunk while in charge on any highway . . . of any carriage, horse, cattle, or steam engine . . . may be apprehended," and shall be liable to a penalty of 40*s*. or one month's imprisonment. In *Corkery* v. *Carpenter* (1950) 114 J.P. 481; 2 All E.R. 745, it was held, applying *Taylor* v. *Goodwin* and *Cannan* v. *Earl of Abingdon*, that a bicycle, whether ridden or pushed, is a carriage within the meaning of that section.

It would therefore appear that a bicycle is a carriage within the meaning of s. 54 (7) of the Metropolitan Police Act, 1839.

PERSONALIA

APPOINTMENTS

Mr. Sidney Ibbetson, the deputy clerk, has been appointed full-time clerk to the Grimsby borough magistrates to succeed Mr. William Ayto Houltby, who retired on April 30, last. Mr. Ibbetson, who came to Grimsby from Goole, is 49 years of age, and had been senior clerk at Grimsby since 1935. Mr. Houltby had been part-time clerk since 1936, and he and his firm have acted as clerks since the commission of the peace was first granted to Grimsby in 1836.

Mr. G. Lorraine, LL.B., has been appointed deputy town clerk of Boston, Lincs. Mr. Lorraine has been legal assistant to the urban district council at Brentwood since September, 1955, and was previously an assistant solicitor with the corporation of Brighton, Sussex, and Peterlee, Co. Durham, development corporation.

Mr. John Bradley has been appointed clerk to Ennerdale rural district council, West Cumberland, in succession to the late Mr. I. F. Harrison. He has been deputy clerk for 17 years. Originally with the old Cleator Moor urban district council, he joined the Ennerdale council when it was formed from an amalgamation of local authorities in 1934, as deputy chief financial officer.

Superintendent H. Marchant, of Birkenhead police force, has been appointed to succeed Superintendent W. K. Ellis on the latter's retirement. He has been promoted from grade two to grade one and will take over at Well Lane. Superintendent Ellis joined the force in September, 1919. During his early career he served in the C.I.D., and then in the administrative department at headquarters. He was promoted sergeant in 1928, inspector in 1933, chief inspector in 1944, and superintendent in 1947. Chief Inspector A. M. McIntosh is promoted to superintendent. He joined the force in 1936. He was transferred to the C.I.D. in 1940, became inspector in 1949 and was moved to the uniformed branch. He returned to the C.I.D. as detective inspector in 1951, and was promoted chief inspector in 1954.

Mr. A. Wilson, chief inspector of audit at the Ministry of Housing and Local Government, is retiring on June 2, next. He is being succeeded by Mr. H. T. R. Bates, at present deputy chief inspector of audit, whose appointment as chief inspector becomes effective on June 3, next.

RETIREMENTS

Mr. H. J. Vann, O.B.E., chief constable of Birkenhead since September, 1942, has given notice of his retirement, to become effective at the end of September or the beginning of October. Mr. Vann started his police service with the Swansea city police force, which he joined in 1919. In 1933 he was appointed acting chief constable of Lancaster. He was appointed chief constable of Maidstone, Kent, in 1937, remaining there until coming to Birkenhead. Mr. Vann received the King's Police Medal for distinguished services in 1949. In June, 1954, he received the O.B.E. and in January, 1956, was admitted by the Queen as a Serving Brother of the Most Venerable Order of St. John of Jerusalem, in recognition of his interest throughout his career in first-aid. In June last year he was appointed chairman of No. 1 District of the Association of Chief Police Officers, and of the No. 1 District Police Training Centre.

Mr. G. H. Tillyard has retired from the post of clerk to the justices for the petty sessional divisions of Kibbor and Caerphilly Lower. Mr. J. Wilson Halliday, LL.B. (Lond.) has succeeded Mr. Tillyard in the position.

Mr. James Webster, senior assistant magistrates' clerk at Ormskirk, Lancs., county magistrates' court for 40 years, has retired after nearly 58 years' association with the court.

Mr. Frank R. Poole, clerk to Neston, Cheshire, urban district council, is to retire after 44 years in local government.

OBITUARY

Mr. George Herbert Heelis has died at the age of 88 years. He was former clerk to Appleby, Westmorland, bench for 44 years and also a former town clerk of Appleby. Mr. Heelis was articled with his brother, the late Mr. E. A. Heelis, in the firm of E. and E. A. Heelis, Appleby, about 70 years ago and qualified in 1893, eventually joining his brother as a partner. He succeeded Mr. Guy Heelis, son of his brother, on his death, as town clerk from 1933 to 1946 and in 1951 retired from the Appleby bench clerkship. His daughter, Miss Rosemary Heelis, is a solicitor and his son, Mr. Colin Heelis, is also connected with the family firm.

Mr. Cecil Charles Hudson Moriarty has died at the age of 81. Mr. Moriarty was a district inspector with the Royal Irish Constabulary, from 1902 to 1918; assistant chief constable of Birmingham, from 1918 to 1935; and chief constable of Birmingham from 1935 to 1941. Mr. Moriarty was educated at Trinity College, Dublin. He graduated B.A. and took the degrees of bachelor of laws in 1912 and doctor of laws in 1932. He was awarded the King's Police Medal in 1929 and was a Commander of the Order of St. John of Jerusalem. Mr. Moriarty was the author of standard books on police law: *Police Procedure and Administration*, published in 1930 is now in its sixth edition and his *Police Law* (1929) is in its fourteenth edition. *Questions and Answers on Police Duties*, which he wrote in three series, were put together in an omnibus edition in 1954.

SHORTER NOTICES

Financial and General Statistics of County Councils 1956–1957.

This publication, issued by the Society of County Treasurers, is a comprehensive return of Statistics for all counties excluding London.

The expenditure met from rates amounted to an increase of 15·8 *per cent.* on the previous year, and the net rate and grant borne expenditure amounted to £510,766,185. The net debt at £351,884,616 was an increase of 17 *per cent.* over the previous year.

Crematorium Undertakings, for Year ended March 31, 1957.

This is a publication of the Institute of Municipal Treasurers and Accountants. Divided into two parts, this return shows the main varieties of fees and charges, together with statistical information quite astonishing in its depth. The majority of authorities seem to operate their crematoria at a profit.

Welfare Services Statistics, 1956–57

Published jointly by the I.M.T.A., and the Society of County Treasurers, this eighth annual return shows an analysis of net expenditure and grants; costs per resident week and other statistical information.

THE WEEK IN PARLIAMENT

From Our Lobby Correspondent

In the course of a debate in the Lords, Lord Mancroft said that the Government's plans for the development of prisons and borstals had been sadly affected by the present financial stringency and the substantial rise in our prison populations.

He said that as a result of the financial position, some projects had had to be reduced or postponed, including the question of an improvement in prisoners' earnings.

The Government had recognized that prisons had for too long been at the end of the queue. In their more important aspects, and particularly regarding staff and the building programme, the Commissioners' plans for the coming year had, however, not been restricted. Nor had their research programme. Indeed, the amount allocated to it had been very greatly increased.

The second factor, the horrible increase in prison population, was much more serious. The total population of our prisons and borstals had risen, in round figures, from about 20,500 to 24,500 at the end of March this year. That was the highest figure yet recorded. There were two aspects of that grave situation which called for special mention. The first was the overcrowding of the local prisons. In July, 1956, the number of men sleeping three in a cell was 2,200 and was steadily declining. By April 8, 1958, it had soared to 4,389. All one could say about that was that it was 4,389 too many. The second point was the high proportion of the increase among young men. In July, 1956, the borstal population was 2,600. The population today was nearly 4,000.

Those alarming figures were the outcome of an alarming situation. There had been, since the war, several clearly marked fluctuations in the level of crime, with peaks in 1948 and 1951. After 1951 there had been a prolonged decline, which was checked during 1954 and 1955. In 1956 there had been a sharper turn upward, and during 1957 the level had risen more steeply still. In 1954, the number of indictable offences known to the police was 434,000; by 1957 it had risen to about 545,000, which was substantially higher than the peak of 1951. As a natural consequence, the number of offenders received into prisons and borstals under sentence had increased from 29,000 in 1955 to 34,000 last year.

There was a flood of angry young men into our prisons and borstals. In 1956 the number of males in the age-group 17 to 21 found guilty of indictable offences had shown an increase of 19 *per cent.* over the year before. The first six months of last year had shown a further increase for that age-group over the same period of 1956 of no less than 25 *per cent.* in the magistrates' courts and 26 *per cent.* in the higher courts. Those figures disclosed a situation which caused Her Majesty's Government the gravest anxiety.

Those young offenders came from an increasing proportion of youth in the population. They were the early arrivals in the post-war bulge in the birthrate about which so much was heard. If that dreadful level of crime was carried forward into the full effects of the bulge in the birthrate, the situation in a few years' time would be appalling. The borstal population might well be expected to flood far beyond a figure of 5,000, and that might be almost unmanageable.

However, it was fortunately possible to hope that phenomenon would pass with the generation born just before or in the early days of the war. Whereas in 1956 youths of 18 or 19 had shown an increase in indictable crime of over 60 *per cent.* compared with 1938, statistical studies showed that those born 10 years later showed no abnormal tendency to crime. Indeed, they were little or no worse than the same age group had been in 1938. There was, therefore, a ray of hope.

In 1955, Lord Tenby had asked the Home Secretary's Advisory Council on the Treatment of Offenders to examine the possibility of devising suitable alternatives to some of the short terms of imprisonment now imposed by the courts. The Council had recognized that for some offenders there was no alternative to short terms of imprisonment, but they recommended various means of keeping out of prison those for whom imprisonment was not really essential. Action had, or was being, taken, on those recommendations. The Council had suggested an experimental attendance centre for males of 17 to 21 years old. The Prison Commissioners hoped to establish such a centre at Manchester this year. They had suggested that maximum fines should be reviewed, since a heavier fine might be a suitable substitute for imprisonment. The Home Secretary had already put a review of small statutory fines in hand. They had recommended that the courts should be enabled to attach the wages of maintenance defaulters as an alternative to committing them to prison: a Bill for that purpose had been given a second reading. Finally, they had recommended that s. 17 of the Criminal Justice Act, 1948, under which a court might not impose imprisonment on a person under 21 unless it considered that no other method of dealing with him was appropriate, should be extended to adult first offenders. A Private Member's Bill applying that recommendation to magistrates' courts was making progress in the Commons.

As the Advisory Council had pointed out, the courts could help to restrict the use of imprisonment by the care with which they considered the penalty to be imposed and by using the existing alternatives to imprisonment where they considered them adequate. The Council thought that if magistrates made more use of their power to remand for inquiry, that might be the greatest factor in eliminating unnecessary short terms of imprisonment. The question of how to ensure that the courts could have before them all the relevant information about an offender, was among those to be considered by a new inter-departmental committee which the Lord Chancellor and the Home Secretary were about to set up. But whatever the possibilities of reducing the intake might be, the immediate need was to find space for those already in prison or borstal, and those who were about to enter.

A second junior detention centre at Wellington had been opened for 65 boys. A borstal for 50 girls at Moor Park, Staffordshire, had also recently been opened. The new security prison at Everthorpe, near Hull, was expected to be ready in June, though, unfortunately, it had to begin its career as a borstal, not as a prison. A second new prison at Hindley, near Wigan, was now under construction and should be completed in 1960. The main work on the new psychiatric prison, the East-Hubert Institution, should be completed by 1961. Work on a new central borstal reception centre which was to be adapted from a children's home, had begun and was expected to be completed in 1960. Work on a new boys' security borstal in Staffordshire, for completion in 1961, was expected to begin this year, and also work on a new security girls' borstal in Essex for completion in 1960. The Commissioners were looking for sites for two more security borstals for boys. And a search was in progress in the north of England for a site for the first remand and observation centre.

Most of those buildings would not be ready for some little time. They could not be used to reduce the present acute shortage of accommodation. To meet the immediate need the Prison Commissioners had for some time been examining Government buildings likely to become available by changes in the defence programme, and much progress had already been made. A Ministry of Supply hostel at Drake Hall in Derbyshire, was being acquired as an open prison for 480 male civil prisoners. Occupation should begin next month. Planning permission was also being sought for four more open establishments, two prisons and two borstals.

PARLIAMENTARY INTELLIGENCE

Progress of Bills

HOUSE OF LORDS

Tuesday, April 22

STATUTE LAW REVISION BILL—read 1a.
PREVENTION OF FRAUD (INVESTMENTS) BILL—read 1a.
NATIONAL HEALTH SERVICE CONTRIBUTIONS BILL—read 3a.

Wednesday, April 23

ROYAL SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS BILL—read 2a.

Thursday, April 24

ROAD TRANSPORT LIGHTING (AMENDMENT) BILL—read 3a.

HOUSE OF COMMONS

Wednesday, April 23

FINANCE BILL—read 1a.

Thursday, April 24

LANDLORD AND TENANT (TEMPORARY PROVISIONS) BILL—read 2a.

Friday, April 25

INDUSTRIAL ASSURANCE AND FRIENDLY SOCIETIES ACT, 1948 (AMENDMENT) BILL—read 3a.

RAGGED REFLECTIONS

The predilections (to which we gave expression last week) for the quietism that is one of the chief attractions of the academic life, and for the refinements of linguistic studies, have received a rude shock. Our analysis, perhaps, was over-complacent, or it may be that the devotion we expressed to Athene, Goddess of Law and Learning, was deemed excessive by the other deities—a sample of that *hybris*, or arrogance, which so often, in Greek tragedy, draws down divine retribution upon its author's head. "Nothing in excess" was a maxim of Hellenic philosophy, and we should, maybe, have borne it in mind even in eulogizing the virtues of elegance and lucidity in literary style.

In English and Scottish universities, we believed, students' "rags" are the exception that proves the rule. They are a kind of traditional Saturnalia, a carnival of youth, an ebullition of boisterousness, a bursting of the bonds of scholastic discipline, which is supposed to be a healthy symptom of adolescent high spirits. Occasional "rags" are expected of the student body and tolerated by the faculty. Licence of this kind in a seat of learning provides an outlet for the Faustus in each of us—a kind of sowing of academic wild oats which (like chicken-pox) it is better to get over and done with at the undergraduate stage.

That is why, when we compared the academic to the contemplative life, we felt ourselves entitled to ignore the licensed exhibitionism of the Rectorial Installation at Glasgow University. To the student of constitutional law there is something ironical in the spectacle of the Secretary of State for Home Affairs—the Minister responsible for national order and administration—caught in a *mêlée* where bags of flour, soot, eggs and fruit descend upon a distinguished gathering from every quarter of the compass. To every man, whether lawyer or layman, there is something admirable in the stoicism and good humour exhibited by the right honourable gentleman under fire. Some of us may be pardoned for the opinion that synthetic high spirits cease to be funny when they descend to hooliganism, and that the behaviour which disfigured the Glasgow celebrations turned a good joke into a bad one. But the Scottish educational tradition is powerful enough to ride out the storm; its rugged characteristics, which were here to the fore, are balanced by others of a highly refined and civilized variety.

The late Charles Morgan produced a consummate work of art in *The Fountain*, where he set the effort—and the failure—of an Englishman to achieve and perfect a life of contemplation against the turbulence and cruelty, the lust and hatred, of the 1914 war. Although, as that writer showed, there has been a tradition of quietism, in England and Western Europe, going back to mediaeval times, it is a tradition neither indigenous nor particularly well-suited to the Western World. That tranquility and passivity, that habit of looking inward, the cultivation of which alone enables the waves of inspiration to break over and saturate the mind and the soul of man with philosophic delights, or religious ecstasy, was taught in the seventeenth century by Miguel de Molinos of Spain, Fénelon and Jeanne Marie Guyon in France, and the Quakers and Anabaptists in Northern Europe; but its real home is in India. Hinduism and Buddhism have produced a great body of literature, going back 3,500 years to the Vedas and the Upanishads, which tells of the age-old search for philosophic truth, for spiritual peace and tranquility of mind, by self-disciplinary and intuitive methods. And this ancient tradition is still alive and flourishing today, wherever the great works of Indian civilization are studied.

The immense difficulties that confront the educational authorities in that vast sub-continent have been brought out by the Chairman of the University Grants Commission at a conference in Delhi on "problems of teaching English." India's long association with the British Commonwealth has left its mark, and the learned chairman, while sympathising with the desire to give a more important place in the curriculum to the Indian languages, warned his audience of the risk of intellectual isolation which the displacement of English in schools and universities would entail. "As though" says *The Times* "to emphasize the urgency of the Commission's deliberations, the newspapers report 'a general breakdown of morale' among students sitting for the intermediate examination at Bareilly, in the United Provinces." At one college an invigilator, who had detected and cautioned two candidates found copying from notes, was waylaid at the end of the period and seriously hurt by "a volley of brickbats and stones." At another college the examination hall was invaded by friends of candidates, "who openly helped them with the papers while the invigilators stood by helpless." At a girls' college one candidate "bit an invigilator who tried to confiscate notes smuggled into the examination hall"; and, at another, an attempt to search a candidate suspected of possessing hidden notes "led to a general *mêlée*." The local teachers' union observed a "mass protest fast" against the authorities' failure to protect them.

Thus evil communications corrupt good manners. Can it be that an echo of the Glasgow disturbances has penetrated to the fastnesses of knowledge and learning even in India, where the Aryan languages were born and the foundations of western culture were laid? Are the restless, militant habits of the materialistic west returning to undermine the very structure of speculative thought and intuitive inspiration in their original home—the land of the sages Samkara, Ramanuja and Madhva? It cannot and it shall not be. In Bareilly, as in Glasgow, the exception must prove the rule. A.L.P.

PRACTICAL POINTS

All questions for consideration should be addressed to "The Publishers of the Justice of the Peace and Local Government Review, Little London, Chichester, Sussex." The questions of yearly and half-yearly subscribers only are answerable in the Journal. The name and address of the subscriber must accompany each communication. All communications must be typewritten or written on one side of the paper only, and should be in duplicate.

1.—Game—*Night Poaching Act,* 1928, *s.* 1—"*Instrument*"—*Powerful lamp.*

Is a "powerful lamp" deemed to be an instrument within the meaning of the latter part of the above section?

HEDLITE.

Answer.

The section prohibits the use of "any gun, net, engine, or other instrument for the purpose of taking or destroying game." The common factor in the three specified by name is the taking or destroying of game and if the lamp is used for one of those purposes, *e.g.*, to dazzle birds, we think it is an "other instrument" within the meaning of the section.

2.—Highway—*Connexion of drains to public sewers—Breaking up and reinstatement by local authorities.*

Under s. 34 of the Public Health Act, 1936, a person has a right to connect a drain to a public sewer. The laying of the drain and consequent opening of the road is controlled by the Public Utilities Street Works Act, 1950. In relation to street works the highway authority can elect to reinstate only if the works are in the carriageway of a classified road (leaving out trunk road). Under s. 36 of the Public Health Act, 1936, the local authority can elect to make the communication of a drain with a public sewer, and for the purposes of that section, the making of the communication includes all such work as involves the breaking open of a street. (This section is not repealed by the Act of 1950, and refers only to breaking open and not to reinstatement.)

The Act of 1950 contains special provisions as to public sewer works and the sewer authority may elect to break open the sewer and reinstate the sewer, but as a sewer authority this does not include highway works. If the Act of 1950 is relied upon, the highway authority have no right to elect to open up a street to enable the sewer authority to connect the drain to the public sewer. This would be done by the person wishing to connect. Neither would the highway authority have the right to elect to reinstate except in the case of the carriageway of a classified road.

On the other hand, the Public Health Act, 1936, gives a local authority the right to elect to break open the street to make the communication but does not specifically mention reinstatement. Reference should be made to s. 15 (3) of the Act of 1950.

Has the local authority any right to insist on reinstating a non-classified road?

P. EGH.

Answer.

If a street is broken up by the owner under s. 34 of the Public Health Act, 1936, or by the sewer authority under s. 36 of that Act, the provisions of s. 279 of that Act as amended by the Water Act, and the Public Utilities Street Works Act, 1950, will apply. Section 279 of the Act of 1936, as amended, applies part VI of sch. 3 to the Water Act, 1945, which is also amended by the Public Utilities Street Works Act, 1950, s. 15 (3) and sch. 5.

The highway authority may elect to reinstate under s. 7 (2) of and sch. 3 to the Act of 1950, except where the works are within s. 3 (2) (*b*) or (*d*) thereof (and, if the service pipe as defined by s. 38 (3) is not in a trunk road or classified road, the authority cannot so elect). A person breaking up the street under s. 34 of the Act of 1936 or a local authority doing so under s. 36 will be liable to reinstate under s. 7 (2) of the Act of 1950.

3.—Housing Act, 1957, s. 16 (4)—*Undertaking going beyond statutory terms.*

For some time this council have been accepting undertakings from the owners of property under the above section of the Housing Act, 1957, formerly s. 11 of the Housing Act, 1936. These undertakings have followed the normal wording of subs. (4), formerly (3), to the effect that the named property "shall not be used for human habitation until the council, on being satisfied that it has been rendered fit for that purpose, cancel the undertaking."

The council now wish me to accept from certain householders who appear to be willing to give the same an undertaking which goes much further than the one contemplated in the subsection. This would be an undertaking that once the council have rehoused the tenant the house will never again be used for human habitation. The undertaking would contain no reference to any future cancellation thereof under any circumstances. The idea behind this desire of the council is presumably in connexion with their slum clearance programme, the houses concerned being houses which will eventually be placed in clearance areas.

I am in doubt whether such an undertaking would be valid, to the extent that any breach thereof could form the subject of either a prosecution under s. 16 (6) or the making of a demolition or closing order under s. 17.

Although, according to Lord Justice Slesser in *Johnson* v. *Leicester Corporation* (1934) 98 J.P. 165, there seems to be no limitation on the kind of undertaking which may be given by the owner and accepted by the local authority in this connexion, it appears that an undertaking of the type which the council desire me to obtain might be *ultra vires,* or fail for want of consideration if attacked in court.

PAIRBO.

Answer.

The effect of *Johnson* v. *Leicester Corporation* (1934) 98 J.P. 165 is that there appears to be no limit on the undertaking about the kind of works proposed, but this does not mean that the nature of the undertaking can go beyond subs (3). The undertaking proposed in the query is legally ineffective.

4.—Licensing—*Off-licence, grant of—On-licence, surrender of.*

A brewery company are the owners of a building which comprises, in part licensed premises for which a justices "on" licence is in force, and part which is a lock-up shop. Though comprised in the same building, the two sets of premises are entirely separate.

The brewery company is desirous of closing the "on" licensed premises, and of opening a beer, wines and spirits "off" licence of the shop type. They propose (*a*) that the tenancy of the lock-up shop be terminated, and those premises adapted for the "off" licence, and if the licensing justices grant a licence, then the full "on" licence would be surrendered, or (*b*) that part of the licensed premises be adapted for the "off" licence, and the "on" licence be surrendered.

In connexion with (*b*) above, plans would be prepared and the justices' approval thereto obtained, and if an "off" licence were granted, the company would surrender the existing "on" licence and an undertaking would be given to the justices that the "on" licensed premises would be closed, on the opening of the "off" licence. (*See* note at p. 686 of *Patterson* (1958 ed.) and *R.* v. *Beesly, ex parte Hodson* (1912) 77 J.P. 19; 3 K.B. 583, *sub. nom. Birmingham Licensing JJ., ex parte Hodson* [1912] 82 L.J.K.B. 23; 29 T.L.R. 9).

I shall be obliged if you will let me know whether in your view course (*b*) could properly be pursued.

OBURL.

Answer.

Proposal (*a*) is quite regular.

We are not sure that we are sufficiently informed of the details of proposal (*b*) to enable us to understand exactly what is desired. There is, of course, no power in licensing justices to grant an off-licence in respect of premises not yet constructed (*i.e.*, an adaptation of the procedure of the provisional grant of an on-licence in accordance with s. 10 of the Licensing Act, 1953), and we do not think that the giving of an undertaking in any form will make the proceedings regular (*see*, generally, *R.* v. *Barnstaple JJ., ex parte Carder* (1938) 101 J.P. 547).

5.—Magistrates—*Practice and procedure—Magistrates' Courts Rules,* 1952, *r.* 55 (1) & (2)—*Proof of service of summons.*

We should be glad to know what precisely is the distinction between the proof of service by "declaration" under r. 55 (1) of the Magistrates' Courts Rules, 1952, and proof of service by "certificate" under subs. (2). It appears that the matters in respect of which service may be proved under subs. (1) are the same as under subs. (2).

What is the advantage of using one method of proof over the other, for in either case if the summons is not personally served upon the accused proof that it came to his knowledge must be given unless a letter or other communication written by or on behalf of the accused is received by the court (r. 76 (2)).

HASYEL.

Answer.

As far as proof of service of a summons is concerned, there is no practical distinction between the method laid down in r. 55 (1) and that in r. 55 (2), because, as our correspondent points out, in either case, if the summons is not personally served, the court requires proof that it came to the defendant's knowledge.

Rule 55 (1) is more extensive than r. 55 (2) insofar as (1) the handwriting or seal of a justice of the peace or other person may be proved by a solemn declaration, and (2) proof by a solemn declaration can be used in any legal proceedings, whereas documents proved by certificate can only be used in any proceedings before a magistrates' court.

6.—Master and Servant—*Truck Act*, 1896—*Deductions from pay for loss of time.*

A firm are proposing to make the undermentioned deductions from the pay of workers who lose time by late arrival at work. Up to six minutes late—no deduction; seven to 25 minutes late —¼ hour deducted; 26 to 36 minutes late—½ hour deducted; 37 to 60 minutes late—one hour deducted.

I shall be obliged if you will give me your opinion as to

(*a*) whether the abovementioned deductions are "fines" within the meaning of s. 1 of the Truck Act, 1896, and if they are considered to be fines whether "the amount of the fine is fair and reasonable having regard to all the circumstances of the case"—see subs. (*d*).

(*b*) The kind of "circumstances" which are mentioned in s. 1 (*d*) of the Act. Should the following factors be taken into account as "circumstances" in determining whether the amount is fair and reasonable:

(i) that no deduction is made from the pay of employees who are up to six minutes late.

(ii) That in other cases the employee may have more or less pay deducted than the actual period of his lateness, *e.g.*, an employee who was seven minutes late would suffer 15 minutes loss of pay as also would another employee who was 25 minutes late.

(*c*) Whether with regard to s. 1 (*d*) of the Truck Act, 1896, if a workman is a member of a trade union and there is a written agreement in force between the trade union and the workman's employers whereby the trade union accept the proposed deductions on behalf of all their members, it is considered to be necessary in this case to have a contract signed by the workman or could the agreement between the employer and the trade union be regarded as a contract "signed by the workman." If a contract in writing is required from each member of the trade union this will mean that nearly 5,000 separate agreements will require to be signed, as it is not desired to exhibit a notice as permitted by the Act.

BARSCO.

Answer.

(*a*) (*b*) These are fines, and (subject to (*c*) below) we are inclined to think the High Court would uphold them, on the ground that exact mathematical correspondence between time lost and the fine imposed is hardly practicable; that a man's prolonged absence will throw industrial processes by others out of gear, and that a penal element is reasonable for lateness beyond what can be due to accident.

(*c*) In our opinion, however, the signature of the man fined must have been obtained, unless the procedure by notice is adopted. It cannot be assumed against an individual (even a member of the trade union) that he has empowered the union to sign away his statutory rights.

7.—Rating and Valuation—*Agreement with owner for discount —Unenforceable for want of stamp.*

The corporation are prepared to enter into agreements with owners of properties pursuant to s. 11 (2) of the Rating and Valuation Act, 1925, whereby in consideration of the owner's agreeing to pay rates on the property for the whole year whether the property be occupied or not the corporation agree to allow a discount on payment of the rates. The owner of a property in the borough is resident in Eire. In January, 1957, he executed a form of agreement for the above premises by signing his name over a 6*d.* (Eire) stamp. The document was not sent to the corporation until much later, so that there was no opportunity of obtaining a proper stamp before the last day prescribed by the agreement, for payment of rates if discount is to be allowed. It is considered that this document is not properly stamped and would not, therefore, be enforceable in the courts of this country except on payment of penalty and, consequently, the corporation are not liable to allow discount to this owner, even though he did pay one half-year's instalment of rates on the last permissible day for discount. I shall be glad to know whether you consider this contention to be well founded.

CURSOR.

Answer.

We agree, as a matter of law. The question whether the rating authority would be well advised to take the point against the owner seems to depend on whether he would be likely to go on paying and (if not) whether they could without difficulty recover rates from the occupier.

8.—Real Property—*Mortgaged property—Sale subject to mortgage—Housing Act*, 1949.

A purchased his house some two to three years ago from a local authority with the aid of an advance under the Housing Act, 1949. The interest charged is 4½ *per cent.* and the mortgage provides for monthly payments of capital and interest. A now wishes to sell his house, and could do so without difficulty subject to the mortgage, in view of the low rate of interest. The local authority do not wish to exercise their option to re-purchase in accordance with the provisions in the conveyance (*vide* Ministry circular 64/52, dated August 26, 1952) and have given consent for the sale of the property at a price as defined by the circular.

The local authority will not, however, agree to the sale subject to the existing mortgage, and require the mortgage to be repaid on sale. They are prepared to advance money to a purchaser on the security of this property, but at the prevailing rate which is six *per cent.* Section 3 (2) of the Small Dwellings Acquisition Act, 1899, makes provision for a borrower to sell subject to the mortgage with the consent of the council, which discretion must not be exercised unreasonably. We cannot, however, find any such provision in the Housing Act, 1949.

Can the local authority refuse to sanction such a proposal where the advance is made under the Housing Act?

P.G.A.R.

Answer.

No, in our opinion, unless a condition for repayment on sale was made at the time of the advance. The Minister has recently issued a statement that in future he will approve such a condition. Otherwise, the mortgagor has the ordinary right of selling.

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